



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0446; FRL-9398-01-R4]

Air Plan Approval; KY; Jefferson County Emissions Statements Requirements for the 2015 8-Hour Ozone Standard Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Kentucky Division for Air Quality (KDAQ) to EPA on August 12, 2020. The proposed revision was submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) to address the emissions statement requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for the Jefferson County portion of the Louisville, Kentucky 2015 8-hour ozone nonattainment area (hereinafter referred to as “Jefferson County”). Jefferson County is part of the Kentucky portion of the Louisville, Kentucky-Indiana 2015 8-hour ozone nonattainment area (hereinafter referred to as “the Louisville, KY Area”) which is comprised of Bullitt, Jefferson, and Oldham Counties in Kentucky. EPA will consider the emissions statement requirements for the Bullitt and Oldham County portions of the Louisville, KY Area in a separate action. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0446 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, EPA promulgated revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm (the 2015 8-hour ozone NAAQS). *See* 80 FR 65292. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years. Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm. *See* 40 CFR 50.19. Ambient air

quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined using Appendix U of part 50.

Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. On April 30, 2018 (effective August 3, 2018), EPA designated a 5-county area in the Louisville metropolitan area, including Jefferson County, as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS using 2014–2016 ambient air quality data.¹ *See* 83 FR 25776 (June 4, 2018). On December 6, 2018, EPA finalized a rule titled “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS.² *See* 83 FR 62998 (December 6, 2018); 40 CFR part 51, subpart CC. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA, including an attainment date of August 3, 2021, three years after the August 3, 2018, designation effective date, for areas classified as marginal for the 2015 8-hour ozone NAAQS.

Ground level ozone is not emitted directly into the air but is created by chemical reactions between oxides of nitrogen (NO_x) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOC.

¹ The Louisville, KY-IN nonattainment area for the 2015 8-hour ozone standard consists of the following counties: Bullitt County, Jefferson County and Oldham County in Kentucky and Clark County and Floyd County in Indiana.

² The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress, reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and compliance with emission control measures in the SIP.

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO_x and VOC stationary source. However, a state may waive the emissions statement requirement for any class or category of stationary sources which emit less than 25 tons per year (tpy) of VOC or NO_x if the state provides an inventory of emissions as required by CAA section 182 that accounts for emissions from those sources. *See* CAA section 182(a)(3)(B)(ii). The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

Based on the nonattainment designation, Kentucky was required to develop a SIP revision satisfying, among other things, CAA section 182(a)(3)(B). On August 12, 2020,³ LMAPCD submitted a SIP revision addressing the emissions statement requirements related to the 2015 8-hour ozone NAAQS for Jefferson County. EPA is proposing to approve the August 12, 2020, SIP submittal as meeting the requirements of section 182(a)(3)(B) of the CAA and associated federal regulations. EPA's analysis of the SIP revision and how it addresses the emissions statement requirements is discussed in the next section of this notice.

II. Analysis of the Commonwealth's Submittal

As discussed above, section 182(a)(3)(B) of the CAA requires states to submit a SIP revision requiring the owner or operator of each NO_x and VOC stationary source located in an ozone nonattainment area to submit to the state annual emissions statements. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter.

The August 12, 2020, SIP submission⁴ contains a version of Regulation 1.06 adopted by LMAPCD on May 20, 2020 (referred to as "Version 10" by LMAPCD). The SIP revision

³ LMAPCD's transmittal letter for the August 12, 2020, SIP revision was dated August 11, 2020, and submitted to EPA on August 12, 2020.

⁴ In the SIP revision, Kentucky states that Version 10 of Regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, satisfies the requirements of CAA section 182(a)(3)(B) for Jefferson County.

requests that EPA incorporate Version 10 of Regulation 1.06 into the SIP, with the exception of Section 5 and references to Section 5,⁵ to replace Version 9. Excluding changes to Section 5 and references to Section 5 of Regulation 1.06, Version 10 revises Version 9 by making typographical changes to the title and the “Necessity and Function” section of Regulation 1.06; changing of the title of Section 3 to “Requirements for Emissions Statements”; renumbering a portion of subsection 3.2.7 to subsection 3.3 and changing the newly renumbered subsection 3.3 by replacing references to Sections 4 and 5 with “in emissions statements”; renumbering subsection 3.3 to subsection 3.4 and adding “The District may require such additional information be submitted as necessary.”; renumbering subsection 3.4 to subsection 3.5 and revising the new subsection 3.5 to add that data required by Section 6 shall also be submitted on LMAPCD approved forms in addition to data required by Section 4; renumbering 3.5 to subsection 3.6; revising subsection 4.3 by changing a reference to Section 6 to Section 7 due to a renumbering of those sections later in the regulation; insertion of a new Section 6 titled, “Emissions Statements for Ozone Precursors,” including the addition of subsection 6.1 to read: “On or before April 15 of each year, all stationary sources of oxides of nitrogen or volatile organic compounds shall submit to the District a statement of actual emissions of those compounds.”; the addition of subsection 6.2 to read: “Exemptions from this section.”; the addition of subsection 6.2.1 to read: “Facilities with less than 25 tons per year of plant-wide actual volatile organic compounds or oxides of nitrogen emissions are exempted from this requirement, unless emissions of the other are at or above 25 tons per year.⁶ The District may require sources claiming this exemption to provide adequate information to verify actual emissions for the previous year.”; the addition of 6.2.2 to read: “The District may waive this requirement for sources located in an area designated as attainment or maintenance by U.S. EPA

⁵ EPA incorporated all of Version 9, except for Section 5 – *Emissions Statements for Toxic Air Contaminants* and any reference to Section 5 located in Section 3, into the SIP on August 28, 2017. See 82 FR 40701.

⁶ On page 28 of the August 12, 2020 KDAQ submittal, Kentucky clarifies the meaning of section 6.2.1 by stating “Combined emissions exceeding 25 tpy do not prevent a source from being exempt, so long as actual emissions of neither pollutant when taken alone exceeds 25 tpy”.

for all National Ambient Air Quality Standards (NAAQS) for ozone.”; the addition of subsection 6.3 to read: “The emission statements submitted by the source to the District shall contain (at a minimum) all information required by Section 3 of this Regulation. The Emissions Statement submitted under Section 4 may be used to satisfy the requirements of this section.”; renumbering the former Section 6 to Section 7; and changing the new Section 7 to state that the required formal certification by a responsible official is defined in Regulation 1.02 instead of 2.16. As requested by LMAPCD, EPA is not acting on Section 5 or on the references to Section 5.

EPA has preliminarily determined that the changes to Regulation 1.06 in the August 12, 2020, SIP revision are consistent with the CAA. Aside from the addition of Section 6, the changes correct typographical errors, clarify the rule, and expand the scope of the rule. The addition of Section 6 modifies the emissions threshold for sources to submit annual emissions statements for ozone precursors to LMAPCD and is approvable for the reasons discussed below.

As allowed by CAA section 182(a)(3)(B)(ii), LMAPCD waived the emissions statement requirements for stationary sources emitting less than 25 tpy of NO_x or VOC. CAA section 182(a)(3)(B)(ii) allows a state to waive the application of emissions statements requirements to any class or category of stationary sources which emit less than 25 tons per year of VOC or NO_x if the state, in its submissions under section 182(a)(1) or 182(a)(3)(A),⁷ provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

Pursuant to CAA section 182(a)(3)(A), Kentucky is required to submit a revised inventory meeting the requirements of section 182(a)(1) at the end of each 3-year period after submission of the inventory under section 182(a)(1) until the Louisville, KY Area is redesignated to attainment. CAA section 182(a)(1) requires the submission of a comprehensive, accurate, current inventory of actual emissions from all sources, as described in CAA section 172(c)(3), in

⁷ CAA section 182(a)(3)(A) contains a triennial emissions inventory requirement.

accordance with guidance provided by EPA.⁸ To comply with CAA section 182(a)(3)(A)’s requirement to submit periodic emissions inventories, LMAPCD submits NO_x and VOC emissions data to EPA’s National Emissions Inventory (NEI)⁹ consistent with 83 FR 62998, “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,” and 40 CFR 51.1315. That emissions data includes small stationary sources (namely, those emitting less than 25 tpy of NO_x or VOC) in accordance with CAA section 182(a)(3)(B)(ii).

For the reasons discussed above, EPA has preliminarily determined that Jefferson County’s emissions statement regulation meets the requirements of the CAA, including section 182(a)(3)(B) and the SIP Requirements Rule for the 2015 8-hour ozone NAAQS for the Jefferson County portion of the Louisville, Kentucky-Indiana Area.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 1.06 – *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, Version 10, District effective on May 20, 2020, with the exception of Section 5 and any references to Section 5. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Kentucky’s August 12, 2020, SIP revision as discussed in Section II, above. If this proposal is finalized, the text of Jefferson County Regulation 1.06 in

⁸ CAA section 172(c)(3) states, “Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.”

⁹ To access EPA’s NEI, please visit: U.S. EPA, *National Emissions Inventory (NEI)*, <https://www.epa.gov/air-emissions-inventories/national-emissions-inventory-nei>.

the SIP will reflect the version of the rule effective on May 20, 2020 (Version 10) with the exception of Section 5 and any references to Section 5. EPA proposes to find that the Commonwealth's submission meets the requirements of sections 110 and 182 of the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 29, 2021.

Daniel Blackman,

Regional Administrator,

Region 4

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